



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

June 17, 2004

Ms. Pamela Smith  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR2004-4940

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 203523.

The Texas Department of Public Safety (the "department") received a written request for all offense, incident and arrest reports, including witness statements and confessions, regarding a named individual in reference to a specified charge. You contend that the requested information, a representative sample of which you submitted to this office, is excepted from required disclosure pursuant to section 552.101 of the Government Code.<sup>1</sup>

We first address your contention that the submitted information is confidential under article 20.02 of the Code of Criminal Procedure and thus must be withheld from the public pursuant to section 552.101 of the Government Code.<sup>2</sup> Section 552.101 encompasses information that is protected by other statutes. Article 20.02(a) of the Code of Criminal Procedure states that "[t]he proceedings of the grand jury shall be secret." Thus, information that reveals the

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<sup>1</sup>In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

<sup>2</sup>Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

proceedings of the grand jury is confidential under article 20.02(a) of the Code of Criminal Procedure and therefore is excepted from disclosure under section 552.101 of the Government Code. We have marked the information that is confidential under article 20.02(a) of the Code of Criminal Procedure. You must withhold that information from the requestor. We find that the remaining submitted information does not reveal the proceedings of the grand jury, and therefore, as you raise no other exceptions to disclosure, it must be released to the requestor with the following exceptions.

The submitted documents contain information relating to current or former peace officers who are not employed by the department. This information may be subject to section 552.1175 of the Government Code, which provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure;

....

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(b). You do not inform this office, nor does any of the submitted information indicate, whether the individuals whose information is at issue are currently licensed peace officers who have notified the department of their elections of confidentiality for this information in accordance with the above-cited subsections 552.1175(b)(1) and (2). *See, e.g.,* Open Records Decision No. 678 (2003) (concluding that county voter registrar was

authorized to release voter information made confidential under section 552.1175 of Government Code to another governmental entity, but that transferred information would not be confidential in possession of transferee until recipient governmental entity receives a section 552.1175 notification). If these individuals are currently licensed peace officers who comply with section 552.1175(b), the department must withhold the information we have marked. If not, the department must release this information unless otherwise confidential by federal law as discussed below.

We note that social security numbers that are not otherwise excepted from disclosure under section 552.1175 might be protected under section 552.101. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990.

Finally, we note that the submitted information contains drivers license numbers. Section 552.130 of the Government Code provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

You must withhold the Texas driver's license numbers in the submitted information under section 552.130.

To summarize, the information we have marked under section 552.101 in conjunction with section 20.02 of the Code of Criminal Procedure must be withheld from the requestor. The department must withhold the information we have marked under section 552.1175 if the individuals to whom this information pertains are currently licensed peace officers who comply with section 552.1175(b). Social security numbers may be confidential under section 552.101 in conjunction with federal law. Driver's license numbers in the submitted information must be withheld under section 552.130. The remainder of the submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free,

Ms. Pamela Smith - Page 5

at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael A. Pearle". The signature is fluid and cursive, with the first name "Michael" and last name "Pearle" clearly distinguishable.

Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/jh

Ref: ID# 203523

Enc: Submitted documents

Ms. Pamela Smith - Page 6

c: Mr. John Lopez  
Staff Investigation  
State Board of Educator Certification  
4616 West Howard Lane, Suite 120  
Austin, Texas 78728  
(w/o enclosures)